

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Mosby Irrigation Company Attn: Brian Murray</p> <p>RESPONDENT</p>	<p>CONTROL STRUCTURE NOTICE</p> <p>SEAA No. 1498 DISTRIBUTION ACCOUNTS: 100593 WATER RIGHT: 43-3743 45-515 45-5246</p>
--	--

I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:

(a) each location where water is diverted from a source; and

(b) any other location required by the state engineer.

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

(a) the measuring device; and

(b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

(a) forbid the use of water until the user complies with the state engineer's requirement; and

(b) commence enforcement proceedings authorized by Section 73-2-25.

II. STATEMENT OF FACTS

1. The Respondent, Mosby Irrigation Company, is the owner of the above-referenced water rights.

2. The Respondent diverts Mosby Irrigation Company water into what is known as the Dave Murray Ditch.
3. The Dave Murray Ditch diversion structure is located on property owned by Brian Murray, who is also a shareholder in the company and a company representative.
4. The Dave Murray Ditch headgate or turnout "rediversion" is regulated and reported by the Deep Creek Water Commissioner under the direction of the Utah State Engineer.
5. The headgate at the Dave Murray Ditch does not seal shut leaving approximately 1.5 cfs of water in the ditch when it is closed.
6. A Mosby Irr. Co. shareholder attempted to replace the headgate, but was denied access to the headgate by Respondent Brian Murray or Respondents representative.
7. Under Utah water law, all water users must install and maintain operable headgates and measuring devices at each diversion.
8. All water delivered to the Dave Murray Ditch must be measured, controlled and reported by the Deep Creek Water Commissioner in order to properly distribute the natural flow waters of Deep Creek and the storage waters of Mosby Irrigation Company in accordance with the applicable water rights.

III. ACTIONS REQUIRED

1. Respondent or others must install a proper and serviceable headgate / control structure at the Point of Diversion (POD) of the Dave Murray Ditch.
2. The headgate must enable the control of water diverted so the water commissioner can properly regulate the flow of company water to this diversion. Specifically, the flow must cease or shut completely off when the headgate is closed.
3. The Respondent may complete this work or allow others willing to complete the work sufficient access to the headgate to make these required repairs in a timely manner. The purpose is to prevent unlawful diversions at the Dave Murray Ditch.
4. **The required work must be completed before June 19, 2014.**

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In

addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.”

V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert Leake
Regional Engineer
Eastern Region
Utah Division of Water Rights
Vernal Office
(435) 781-5327

Ben Anderson
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469
1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 29th day of May, 2014

A handwritten signature in black ink, appearing to read "Ben Anderson", is written over a horizontal line.

Ben Anderson, P.E.
Distribution Engineer
Utah Division of Water Rights

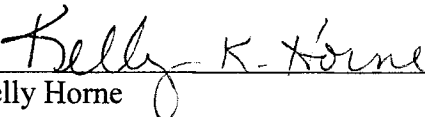
cc: Robert Leake, Regional Engineer
Tyler McKee, Deep Creek Water Commissioner
Chris Walker, Mosby Irrigation Company

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 29th day of May, 2014, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Mosby Irrigation Company
Attn: Brian Murray
PO Box 72
Lapoint, UT 84039**

USPS TRACKING # **9114 9011 2308 6069 1220 94**
& CUSTOMER RECEIPT For Tracking or inquiries go to USPS.com
or call 1-800-222-1811.



Kelly Horne
Division of Water Rights
Field Services Secretary